ORIGINAL

IN THE HIGH COURT OF AUSTRALIA

WYLIE

V.

COLQUHOUN

ORIGINAL

REASONS FOR JUDGMENT

Judgment delivered at SYDNEY

on Friday, 9th November, 1962.

W. M. Houston, Govt. Print., Melb.

WYLIE

v.

COLQUHOUN

JUDGMENT
(ORAL)

JUDGMENT OF THE COURT
DELIVERED BY DIXON C.J.

CORAM: DIXON C.J.
McTIERNAN J.
KITTO J.
TAYLOR J.
WINDEYER J.

WYLIE

v.

COLQUHOUN

This appeal is by a defendant from a judgment of the Supreme Court of New South Wales refusing an application to that Court by the defendant for a new trial on the ground that the verdict in favour of the plaintiff awarded an amount of damages excessively. The appeal to this Court is as of right and is made in an attempt to obtain what I think is the unobtainable, that is to say some generalised standard for control of the amount of damages which may be awarded in a type of case which I suppose is regarded as repeatedly appearing.

The action was for personal injuries sustained in an accident. The plaintiff was a married woman of thirty-three years of age and the jury awarded her a sum of £17,863.1.4. It is said that it must be certain that of that sum £1,863.1.4 was for special damages consisting of out-of-pocket expenses and if that is so, the general damages are £16,000.

In refusing the application for a new trial the present Chief Justice of New South Wales delivered a judgment for himself; he sat with Mr. Justice Sugerman and Mr. Justice Brereton who also delivered judgments. Mr. Justice Sugerman agreed with his Honour, Mr. Justice Brereton did not. His Honour the Chief Justice said that Mr. Begg, counsel who has appeared for the appellant here as well as before the Supreme Court, had stated the sum of £16,000 was the highest award for general damages that the Court had had to consider up to date. The Chief Justice answered him by saying the injuries in this case are possibly the worst case of damage to body and mind of a human being to which his Honour had had the misfortune to listen. I do not know that those comparisons, though in opposition, are really arguments that ought to be entertained as having weight.

The difficulty which I feel in cases of this description is that the court, that is, the Supreme Court, is exercising a jurisdiction in controlling a jury's verdict and the law really knows of only one standard when you are dealing with a jury's verdict, if it is not affected by misreception of evidence, misdirection or other errors at the trial, and that is whether the verdict is unreasonable. The courts have interfered with juries for generations on the ground that on the evidence the result is unreasonable. And that, in the end, is all you can do in the case of damages said to be excessive or inadequate.

Their Honours thought the £16,000 awarded in this case a very high verdict but they did not think that it was so high a verdict - except Mr. Justice Brereton - that they could interfere on that ground in the exercise of the Court's authority to control what juries do and we agree in that conclusion. I do not propose to expatiate on this case. Mr. Justice Herron in his judgment set out the injuries which the plaintiff had sustained. He gave a brief or summary account of those injuries on pages 156 to 161 of the transcript. They are all summarised there and no useful purpose is to be served by repeating them. His Honour ended by saying that he thought- and I have already said this - "High as the verdict undoubtedly is, I feel myself it is one of those cases in which the jury must have had the right to form their opinion with a certain degree of latitude in a matter such as this."

His decision was put on a ground concerned with the province of the jury to estimate what his Honour called imponderable damages. We think that this Court ought not to allow an appeal from that judgment, and that though the damages may be regarded as high, it was matter falling within the province of the jury, and certainly it was within the province of the Supreme Court, to decide as they did.

I would add, just because it is the statement of the trial judge, an extract from the trial judge's summing up to the jury. He said, addressing the jury: "You may think - and it is a matter entirely for you, gentlemen, that the result of the accident has been to transform the plaintiff from a bright, active, able-bodied woman of thirty-three years - a housewife and mother who in addition to her wifely and maternal duties found time for pleasurable pastimes such as tennis and music - into a physical wreck, a woman who can, and apparently for the rest of her life will be able, to walk only with pain and difficulty and over level surfaces, who has lost the efficient use of her right arm, who cannot perform the normal duties of a wife and mother, who can no longer enjoy the normal pleasures and amenities of life and who will rarely be free from pain and discomfort. If that be the true picture of the present and future condition of the plaintiff I think you will agree that it is rather a grim picture. But, gentlemen, I again remind you that it is for you and not for me to decide what is the true picture." And there you have the impression produced upon the trial judge as one which it was open to the jury to adopt, not one which he asked them to adopt. On the whole, it appears to us that whatever view the jury may have taken as to the effect on her monetary or "economic" position - they may have regarded that as completely out of the picture, they may have regarded it as a sort of contingency depending on the life of her husband, and so on, which they could take into account - it was open to them to find the verdict which they did without exposing themselves to any charge of having gone beyond what reasonable men could do on the picture as they saw it.

Those are the reasons why I think this appeal should be dismissed.

McTIERNAN J: I agree.

KITTO J. : I agree.

TAYLOR J. : I agree.

WINDEYER J.: I agree.

DIXON C.J. : The appeal will be dismissed with costs.